

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

ISMAEL HERNANDEZ-NAVARRO,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

Case No. 2:24-cv-139

ORDER

Petitioner Ismael Hernandez-Navarro, an individual incarcerated in a Virginia prison, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, that appears to allege ineffective assistance of counsel claims arising from his conviction for second-degree murder. ECF No. 1 The Court referred the matter to the Honorable Douglas E. Miller for a report and recommendation, pursuant 28 U.S.C. § 636(b)(1)(B) and (C) and E.D. Va. Civ. R. 72.

The Report and Recommendation finds that the petitioner failed to exhaust his state-court remedies. ECF No. 17 at 1–2 (citing 28 U.S.C. § 2254(b); *Breard v. Pruett*, 134 F.3d 615, 619 (4th Cir. 1998)). Therefore, it recommends that the Court deny and dismiss the petition without prejudice.

Judge Miller advised the parties of their rights to object to his findings and recommendations and explained that failure to timely object would result in a waiver of appeal from a judgment of this Court based on such findings and recommendations. ECF No. 17 at 3 (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d

433 (4th Cir. 1984); *United States v. Schronce*, 727 F. 2d 91 (4th Cir. 1984)). The time to file an objection has expired, and neither party objected to the Report and Recommendation.¹

In the absence of a specific written objection, this Court may adopt a Magistrate Judge's recommendations without conducting a *de novo* review, unless the recommendations are clearly erroneous or contrary to law. Fed. R. Civ. P. 72(b)(2); *see Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982) (citations omitted); *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

The Court has reviewed Judge Miller's findings and recommendations and finds no clear error. Accordingly, the Report and Recommendation (ECF No. 17) is **ADOPTED**.

The Petition for a Writ of Habeas Corpus (ECF No. 1) is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.²

¹ After the deadline to file objections to the Report and Recommendation had passed, the petitioner filed a number of documents. ECF Nos. 18–22. In these submissions, the petitioner alleges denial of benefits he believes the Commonwealth owes him, ECF No. 18; issues with the conditions of his confinement, ECF Nos. 18, 19; negligence, misconduct, and/or corruption within the Virginia Department of Corrections the Commonwealth Attorney's Office, ECF Nos. 20, 21; and violations of the United States Constitution and the Universal Declaration for Human Rights, ECF No. 21. The petitioner also expresses dissatisfaction with the execution of prison intake procedures and a desire to know the outcome of his Petition. ECF No. 22.

None of these submissions address the Report and Recommendation or the reason Judge Miller concludes the Petition should be dismissed and denied. Therefore, the Court does not construe any of the submissions as objections within the meaning of Fed. R. Civ. P. 72(b)(2).

² The Court is denying the Petition because the petitioner has to ask for what he wants from the Virginia *state* court first—and complete the appeal process there—

The petitioner failed to demonstrate a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003). Therefore, the Court declines to issue a certificate of appealability pursuant to Fed. R. App. Proc. 22(b).

The petitioner is **ADVISED** that because the Court has denied a certificate of appealability, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If the petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within 30 days from the date of this final order. The petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **DIRECTED** to send a copy of this Order to the petitioner and to counsel for the Commonwealth.

IT IS SO ORDERED.



/s/

Jamar K. Walker
United States District Judge

Norfolk, Virginia
September 26, 2024

before he files a petition here, in *federal* court. Denial “without prejudice” is a legal term that means if the petitioner goes through the proper process in state court, but his request is denied, he can then come back here, to federal court, and file his petition again.